Filed 3/26/09 Townsend v. First Choice Brokerage CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LESLIE TOWNSEND, Plaintiff and Appellant, v. FIRST CHOICE BROKERAGE CORPORATION, Defendant and Respondent.	G040085 (Super. Ct. No. 06CC09145) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, H. Warren Siegel, Judge. Affirmed.

Sullivan, Hill, Lewin, Rez & Engel, Candace M. Carroll, and Brian L. Burchett for Plaintiff and Appellant.

Paul, Hastings, Janofsky & Walker, Glenn D. Dassoff, Paul W. Cane, Jr., and Karin K. Sherr for Defendant and Respondent.

* * *

In August 2005, Plaintiff Leslie Townsend resigned from a job in which she was earning approximately $84,000 per year. Townsend expected to start a new job with better compensation at defendant First Choice Brokerage Corporation (First Choice). However, First Choice notified Townsend in early September 2005 it would not hire her. Townsend sued First Choice under a theory of promissory estoppel. In a bench trial, the court found there was a clear promise of employment by First Choice and found Townsend relied on this promise in resigning from her job. But the court also found Townsend had not met her burden of establishing damages caused by her reliance and therefore entered judgment in favor of First Choice. We affirm.

FACTS

Background

In June 2004, Townsend began working for Capital Management Strategies (CMS), a financial services company operating in the high end of the life insurance market. She was classified as an at-will employee. CMS employed four or five individuals, all working under Julian Movsesian, the president of the company. Townsend's starting salary was $75,000. Within months of starting at CMS, Movsesian asked Townsend why she departed promptly at the end of the standard work day rather than staying to complete her work. Townsend explained she held a second job at Wal-Mart. As a result of this conversation, Movsesian gave Townsend a $9,000 raise so she would not need to work at Wal-Mart at night, bringing her total salary to $84,000.

From approximately November 2004 to early August 2005, Townsend had several conversations with representatives of First Choice, namely its owner and its vice president of sales and marketing. Townsend testified that these conversations included the topic of Townsend working for First Choice, specific references to a willingness to

pay her $20,000 more than she made with CMS, and discussion of the benefits package available at First Choice.

Movsesian suspected Townsend was pursuing employment opportunities elsewhere, as he had noticed her taking long lunches and abruptly hanging up her telephone when he passed her desk. On July 20, 2005, Movsesian confronted Townsend, asking her if she was looking for a new job. Townsend admitted she had been approached by another employer. Movsesian became very upset, explaining he considered trust, loyalty, and commitment to be the most important facets of a mutual employer-employee relationship. Townsend feared she would be fired immediately, but Movsesian instead advised her to let him know what she decided.

Following the July 20 confrontation, Movsesian took away some of Townsend's work and did not include her in meetings involving confidential information. On August 5, 2005, Movsesian summoned Townsend to his office; he asked her whether she had made a decision and indicated he was surprised she had not quit already. Movsesian added: "Did you know that your employment agreement gives you a month severance"? Townsend said she would stay with CMS. But she was "afraid that [Movsesian] would be upset and let [her] go at any time . . . ." Several minutes later, Townsend phoned First Choice's owner from a neighboring building, explaining she was ready to work for him. She told him that Movsesian "was very upset and that he was ready to let [her] go." Townsend testified that the owner indicated it was "a perfect time for [Townsend] to come over" to First Choice and further stated her compensation would be set at approximately $100,000.

The following Monday morning (August 8), Townsend notified Movsesian by phone that she was resigning from her position with CMS. At Movsesian's request, Townsend submitted a hand-written letter confirming her decision, which stated: "This is to inform you that today August 8, 2005, will be my last day of employment with CMS . . . ." The next day, Townsend met with First Choice representatives, in what she

considered an informational meeting (she thought she had the job) but First Choice characterized as an interview. Ultimately, on September 7, 2005, First Choice informed Townsend it would not offer her a job.

On August 16, a CMC representative wrote a letter to Townsend, which stated in relevant part: "This will confirm receipt of your August 8, 2005, resignation letter . . . . We also take this opportunity to respond to general inaccuracies [in] your voicemails and emails in respect to your right to a one month severance. [Movsesian] spoke to you on Friday 5th to inform you that the firm was willing to continue your employment, notwithstanding the fact that you were out interviewing on company time. On Monday 8th, you resigned without any notice whatsoever. This act left our firm scrambling to fill your position and the work left on your desk. In good faith and under no legal obligation, our firm has already provided you 2 weeks severance pay. Please note that your final pay check included this payment along with your outstanding wages. Vacation pay was not included as you had no accrued vacation time. Actually you were in a deficit for vacation time, but we did not deduct for this time. . . . [¶] Although we again are under no obligation whatsoever to pay any severance, [Movsesian] has approved an additional 2 weeks severance."

Evidence Pertaining to Damages

Townsend received severance pay from CMS through the end of August 2005. After learning she would be paid through the end of the month by CMS, Townsend notified First Choice she preferred to begin work in September and she took a brief vacation to Mexico during her time off work. Townsend had no savings or significant assets in September 2005 when she was informed by First Choice she would not be offered a job. After discovering she did not have a job with First Choice, Townsend increased her part-time work for Wal-Mart. She also applied for and received unemployment benefits. In January 2006, Townsend accepted a position with Potomac

Group West, a general insurance brokerage. Her salary started at $55,000, and was raised to $65,000 after two months and $68,000 after her first year.

The bulk of the damages claimed by Townsend consisted of the difference between her salary at CMS ($84,000 at the time she resigned) and her income in the years following August 2005. Townsend's expert witness calculated the month-by-month actual difference in compensation suffered by Townsend from September 2005 to the time of trial, as well as the projected future damages based on the assumption Townsend would continue to earn her Potomac salary through retirement. He then provided a chart of possible damage awards, discounted to present value, which the court could select from depending on its finding of how long Townsend would incur damages. The expert did not offer any opinion as to how likely it was Townsend would have remained at CMS for any particular period of time had she not resigned in August 2005.

Townsend testified that her job at CMS was the "opportunity of a lifetime," and that but for financial considerations she never would have left CMS. It is clear Townsend resigned and was not fired in August 2005. However, in mid-September 2005, Movsesian declined to rehire Townsend when she tried to get her job back. Movsesian's testimony is mixed. On the one hand, he was generally satisfied with Townsend's job performance. On the other hand, Movsesian testified he "wasn't happy" with Townsend after discovering her disloyalty, particularly because he had given her a raise to allow her to quit her part-time job at Wal-Mart only a few months into her stint at CMS. When asked whether he was considering terminating Townsend, he testified: "I don't recall what I said but I wasn't happy." "When I give someone a raise . . . and if the person is not loyal and I find out they're looking for another job, the odds are they might not be sticking around." When asked whether Townsend had been disloyal, Movsesian testified: "You have to put yourself in my shoes. If you hire someone and you pay them well, you give them a raise right out of the gate and then if they start – they decide – they decide to shop around for another job, I consider that not a loyal person." First Choice

also pointed to Townsend's history of "job-hopping"; she has lasted only a year or two at each of her jobs since 2000.

In addition to lost compensation, Townsend also claimed other damages, including medical expenses incurred that she claims would have been covered under her CMS insurance. She also testified about her inability after August 2005 to make life insurance premium payments and payments under a Chapter 13 bankruptcy plan. Her missed payments resulted in the loss of her life insurance policy (and her subsequent need to purchase a new policy at a higher rate once she regained employment) and dismissal of her bankruptcy case (resulting in reinstatement of certain debts).

Judgment

The court found in favor of First Choice on the ground Townsend had failed to establish any damages caused by First Choice. The court determined Townsend had not met her burden of establishing she would have been able to continue her employment with CMS. Without a finding that her employment at CMS would have continued past August 2005, there is no basis for awarding damages to Townsend for lost wages and medical benefits from CMS. The court deemed unforeseeable and therefore unrecoverable the consequential damages alleged by Townsend (including life insurance and bankruptcy related losses).

The judgment was signed and filed on November 9, 2007. The court had previously commented on the record: "The court will prepare the judgment." "I will try and get the judgment out by the end of the day but if not, it will be on Monday and the clerk will give notice." On November 13, 2007, the clerk mailed a copy of the signed, file-stamped judgment to both parties. First Choice did not serve notice of entry of judgment.

Townsend filed a notice of motion and motion for new trial on January 4, 2008. The court denied Townsend's motion. On February 19, 2008, First Choice served

notice of the court's ruling denying Townsend's motion for new trial. Townsend filed her notice of appeal on March 14, 2008.

DISCUSSION

Timeliness of Appeal

Preliminarily, First Choice suggests Townsend failed to file a notice of appeal in a timely fashion, thus depriving this court of jurisdiction to review the merits of Townsend's appeal. We reject this suggestion.

Absent statutory exception or an extension of time pursuant to California Rules of Court, rule 8.108, "a notice of appeal must be filed on or before the earliest of: [¶] (1) 60 days after the superior court clerk mails the party filing the notice of appeal a document entitled 'Notice of Entry' of judgment or a file-stamped copy of the judgment, showing the date either was mailed . . . ." (Cal. Rules of Court, rule 8.104(a).) The rule 8.104 clock began to run when the clerk mailed Townsend a file-stamped copy of the judgment with a certificate of service indicating the date of mailing (November 13, 2007).

The issue presented is whether Townsend received additional time to appeal based on her filing of a motion for a new trial. "If any party serves and files a *valid notice of intention to move for a new trial*, the time to appeal from the judgment is extended for all parties as follows: [¶] (1) If the motion is denied, until the earliest of: [¶] (A) 30 days after the superior court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order; [¶] (B) 30 days after denial of the motion by operation of law; or [¶] (C) 180 days after entry of judgment." (Cal. Rules of Court, rule 8.108(b), italics added.) Here, Townsend filed a notice of intention to move for a new trial, and such motion was subsequently denied.

First Choice contends Townsend did not file a "valid" notice of a new trial motion under the Code of Civil Procedure because the notice came more than 15 days after the clerk's service of the judgment on the parties.[1] If there was no extension of time to file a notice of appeal, Townsend's notice of appeal (filed March 14, 2008) was not timely because it was filed more than 60 days after the clerk mailed a file-stamped copy of the judgment to Townsend (November 13, 2007). Townsend counters that the clerk's service of the judgment did not represent notice of entry of judgment under Code of Civil Procedure section 664.5; thus, the notice of motion for new trial was timely, the court timely ruled on the motion, and the notice of appeal was timely filed within 30 days following notice of the court's denial of the motion. (Cal. Rules of Court, rule 8.108(b)(1)(A).)

Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc. (1997) 15 Cal.4th 51 (*Van Beurden*) is directly on point. In *Van Beurden*, the clerk mailed a file-stamped copy of the judgment to the parties; the prevailing party did not serve a notice of entry of judgment. (*Id*. at p. 54.) The appellate court held it lacked jurisdiction to review the case, as the notice of appeal had come more than 30 days after the deadline for deciding a new trial motion — assuming the clerk's mailing of the judgment constituted notice of entry of judgment pursuant to section 664.5. (*Id*. at pp. 53-55.)

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[1] Code of Civil Procedure section 659 provides that a notice of intention to move for a new trial must be served "[w]ithin 15 days of the date of mailing notice of entry of judgment by the clerk of the court pursuant to Section 664.5." Concomitantly, "the power of the court to rule on a motion for a new trial shall expire 60 days from and after the mailing of notice of entry of judgment by the clerk of the court pursuant to Section 664.5 . . . ." (Code Civ. Proc., § 660.) Code of Civil Procedure section 664.5, subdivision (d), states: "Upon order of the court in any action or special proceeding, the clerk shall mail notice of entry of any judgment or ruling, whether or not appealable."

All further statutory references are to the Code of Civil Procedure.

Our Supreme Court reversed: "[S]ubject to the specified exceptions under Code of Civil Procedure section 664.5, subdivisions (a) and (b), which make notice by the clerk mandatory [in cases in which a prevailing party is not represented by counsel,] when the clerk of the court mails a file-stamped copy of the judgment, it will shorten the time for ruling on the motion for a new trial only when the order itself indicates that the court directed the clerk to mail 'notice of entry' of judgment." "[T]o qualify as a notice of entry of judgment under Code of Civil Procedure section 664.5, the clerk's mailed notice must affirmatively state that it was given 'upon order by the court' or 'under section 664.5,' and a certificate of mailing the notice must be executed and placed in the file." (*Van Beurden, supra,* 15 Cal.4th at p. 64; see also *Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1277-1278.) As in *Van Beurden*, the file-stamped judgment mailed by the clerk in the instant case did not indicate it was mailed pursuant to section 664.5 or by order of the court. Further, as in *Van Beurden*, the prevailing party (First Choice) did not separately serve a notice of entry of judgment. Thus, Townsend's noticed motion for a new trial was timely, the court's resolution of the new trial motion was timely, and Townsend's notice of appeal was timely.

First Choice acknowledges the force of *Van Beurden*, but claims the situation before us can be distinguished because the court here noted on the record that, once it had prepared the judgment, "the clerk will give notice." Even if, for the sake of argument, an oral comment by the court could satisfy the rule announced in *Van Beurden*, the court's comments in this case do not rise to the requisite level of specificity. The court did not refer to section 664.5 or clearly indicate it was ordering the clerk to serve notice of entry of judgment. One rationale noted in *Van Beurden* for refusing to simply assume the court ordered the clerk to provide notice of entry of judgment pursuant to section 664.5, subdivision (d), is the existence of a separate requirement in the California Rules of Court for clerks to provide notice of court rulings to the parties. (*Van Beurden, supra,* 15 Cal.4th at p. 57, fn. 2; see Cal. Rules of Court, rule 3.1109(a) ["When the court

rules on a motion or makes an order or renders a judgment in a matter it has taken under submission, the clerk must immediately notify the parties of the ruling, order, or judgment. The notification, which must specifically identify the matter ruled on, may be given by mailing the parties a copy of the ruling, order, or judgment, and *it constitutes service of notice only if the clerk is required to give notice under Code of Civil Procedure section 664.5* (italics added)"].) The clerk's mailing of the judgment could represent its compliance with the California Rules of Court, rule 3.1109(a). We will not assume the clerk's mailing of the judgment was ordered by the court pursuant to section 664.5, subdivision (d). We have jurisdiction to decide this appeal.

Sufficiency of Evidence

In its oral statement of decision, the court explained its finding that no damages had been proven: "I honestly don't think plaintiff has met the burden of showing any damages in this case. I think the expert opinion [presented by plaintiff] was quite speculative; . . . it was really just a mathematical calculation." "[I]t's hard for me to infer that there would have been continued employment even if she had wanted to stay in August of [2005]." Townsend challenged the court's finding in a motion for new trial and now appeals, claiming the judgment is not supported by substantial evidence.

Toscano v. Greene Music (2004) 124 Cal.App.4th 685 (*Toscano*) guides our inquiry in this case. In *Toscano*, the defendant offered Toscano a sales management position to begin on September 1. (*Id*. at p. 689.) Toscano, relying on this promise of employment, resigned from his previous position on August 1. (*Ibid*.) In mid-August, the defendant withdrew the employment offer; Toscano subsequently could only find jobs paying less than his original position. (*Id*. at pp. 689-690.) Toscano sued; the defendant conceded that Toscano was entitled to compensation for the month between his August 1 and September 1, but contested all damages going beyond that month. (*Id*. at p. 696, fn. 3.) Toscano's promissory estoppel claim proceeded to a bench trial.

Toscano did not seek to recover his expectancy interest (the difference between promised compensation at the new job and income actually obtained following the breached promise of employment). Instead, Toscano sought his reliance damages (the difference in compensation between his original job and the jobs he obtained after the broken promise of employment, both for the time period before trial and in the future all the way until retirement). (*Toscano*, *supra*, 124 Cal.App.4th at p. 690.) The trial court found in favor of Toscano and awarded more than $500,000 in damages. (*Id*. at p. 691.)

The *Toscano* appellate court first addressed the legal issue of "whether a plaintiff who resigns from at-will employment in reliance on an unfulfilled promise of other employment may recover, under a promissory estoppel theory, reliance damages based on wages lost from his or her prior employment." (*Toscano*, *supra*, 124 Cal.App.4th at p. 691.) It held "a plaintiff's lost future wages from the former at-will employer are recoverable under a promissory estoppel theory as long as they are not speculative or remote, and are supported by substantial evidence." (*Id*. at p. 692.)

The *Toscano* court, however, reversed the trial court (and remanded for a new trial on damages) for lack of non-speculative evidence lending support to the award of damages: "Although the *fact* of Toscano's damage was established, [the expert's] conclusions as to the *extent* of Toscano's lost employment were wholly conjectural. We cannot ascertain with any certainty how [Toscano's expert] reached her assumption as to Toscano's continued employment . . . ." (*Toscano*, *supra*, 124 Cal.App.4th at pp. 696-697.) Toscano's expert merely provided arithmetical calculations, and offered nothing to support the conclusion that Toscano would be employed by his original employer through his retirement. (*Id*. at p. 696.) The court further held Toscano's intentions or work history did not provide sufficient evidence to support the judgment. (*Ibid*.) Although *Toscano* did not discuss precisely how a plaintiff could prove non-speculative damages, the opinion suggested (by noting its absence) that testimony from Toscano's original

employer could potentially suffice as substantial evidence for at least some measure of damages. (*Ibid.*; see *Helmer v. Bingham Toyota Isuzu* (2005) 129 Cal.App.4th 1121, 1131 [former supervisor's testimony indicating he was sad to see plaintiff leave because she was a good and reliable employee, and explaining administrative reason she was not rehired, was sufficient non-speculative evidence to support *Toscano* damages].)

Turning to the case before us, the court's finding that Townsend did not suffer any damages caused by First Choice must be reviewed under a substantial evidence standard. (See, e.g., *US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 908.) "When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) Under *Toscano*, an award of damages cannot be supported by evidence incapable of establishing Townsend had a "definite expectation of continued employment with [CMS] for any particular period of time." (*Toscano*, *supra*, 124 Cal.App.4th at p. 696.) Here, unlike the trial court in *Toscano*, the trial court found Townsend had not met her burden of proving the element of damages.

Townsend submitted as evidence her own avowal of an intent to continue working for CMS had she not been offered more money at First Choice. The court was entitled to reject Townsend's self-serving testimony, particularly in light of the fact that she was seemingly anxious to stop reporting to work at CMS, giving notice (by phone) to Movsesian after she received her job offer from First Choice. Townsend testified that at the time, she believed Movesian "was very upset and that he was ready to let me go." The court noted Townsend's propensity to change "jobs every year to two years" as a

factor supporting its decision not to award damages. Moreover, *Toscano*, *supra*, 124 Cal.App.4th 685, explains that Townsend's "intentions or practices are not relevant to whether [she] could expect to remain with" her previous, at-will employer "until . . . retirement." (*Id*. at p. 696.) Thus, while Townsend's intention to continue working for CMS is a necessary condition to recovery of damages in this case, it is not a sufficient condition.

As in *Toscano*, Townsend's only expert witness performed basic mathematical calculations, and provided no evidence as to the length of Townsend's expected tenure at CMS had she not resigned. Such "arithmetic" cannot, on its own, "rise to the dignity of substantial evidence." (*Toscano, supra,* 124 Cal.App.4th at p. 696.) Townsend concedes this point in her brief, noting that her appeal does not seek "to rely on [the expert's] testimony for [the purpose of showing a probability of continued employment]. Instead, as the record shows, [the expert] was only asked to testify regarding his arithmetical calculations of the present value of the wages Townsend lost by resigning from CMS."

Townsend claims the distinction between this case and *Toscano* is the testimony of Movsesian, which Townsend characterizes as supporting the conclusion that her employment with CMS would have continued indefinitely (or at least past August 2005) absent her decision to resign. But that is not the only conclusion supported by Movsesian's testimony, and it is for the trial court to draw the inference it finds most persuasive. We may not second guess an inference drawn by the trial court when supported by substantial evidence. "When, as here, 'the evidence gives rise to conflicting reasonable inferences, one of which supports the findings of the trial court, the trial court's finding is conclusive on appeal.'" (*Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 623.) Movsesian's ambiguous testimony includes, as a hypothetical, a rather clear statement that an employee who did what Townsend did would not be kept on. It is true, as the trial court pointed out in rendering its decision,

neither party directly asked Movsesian whether he would have fired Townsend had she not resigned. But "viewing [the] evidence in the light most favorable to [First Choice], giving [it] the benefit of every reasonable inference, and resolving all conflicts in [its] favor, as we must under the rules of appellate review" (*In re Marriage of* Mix (1975) 14 Cal.3d 604, 614), we note that Movsesian limited Townsend's access to confidential material and business meetings in July and August 2005, and he was unhappy with Townsend in August 2005 based on his belief that employers and employees owe each other trust, loyalty, and commitment, and his knowledge that Townsend had, in his opinion, violated this relationship. As Movsesian put it, when an employee gets a substantial raise after 30 days and is nevertheless looking for another job, "[t]he odds are they might not be sticking around." "[T]hat['s] not a loyal person."

We hold that the trial court was entitled to find Townsend did not meet her burden of introducing sufficient evidence to support an award of damages. Townsend suggests that the court was required to award, at the very least, nominal damages because it is (according to her) simply inconceivable that Townsend would have been fired the very same day she resigned (August 8). In making this argument, Townsend tries to reverse the burden of proof in this case by pointing to the lack of evidence that she would have been fired the same day she resigned. (See *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 655 [pointing to a defendant's lack of evidence does not meet a plaintiff's burden of proof of an element].) But it was Townsend's burden to prove with reasonable certainty that she suffered damages. (See, e.g., *California Shoppers, Inc. v. Royal Globe Ins. Co.* (1985) 175 Cal.App.3d 1, 62.) Townsend needed to prove she would have continued earning a salary at CMS past the end of August 2005 (when the severance voluntarily paid by CMS ran out). The trial court concluded that it would be mere speculation to determine (based on the record developed at trial) whether Townsend would have held her job at CMS for another day, another week, another month, another

year, or the rest of her career. We agree that Townsend failed to establish to any degree of certainty that her employment would have continued past August 2005.

Moreover, even assuming Townsend met her burden of introducing evidence upon which a non-speculative award of damages *could* have been made, we conclude substantial evidence supports the judgment. The court could reasonably infer from this record that Townsend's continued employment at CMS was tenuous. Movsesian was not happy with Townsend in August 2005 and, based on her actions rather than her testimony, Townsend was not torn by her decision to move on from CMS. The court was free to infer that while CMS agreed Townsend resigned and was not fired, the tone of its August 16 letter and its agreement to pay four weeks' severance indicates a desire on the part of CMS to avoid a lawsuit by Townsend rather than an indication that it truly wished to continue its relationship with Townsend for the foreseeable future had she not resigned. Townsend was paid through the end of August by CMS. Thus, a finding that Townsend would have been fired or resigned at any time in August supports the court's judgment, not merely a finding that she would have been fired on August 8. And even if, for the sake of argument, we believed it to be more likely Townsend would have lasted at CMS until October 1 or some other arbitrary date, it would be improper for this court to substitute its judgment for that of the trial court on this factual determination.

Townsend also argues that the court's findings were based upon a speculative inference that had no basis in the record. Townsend cites the following comments made by the court in its oral "statement of decision": "I'm going to find[,] based on the [trust, loyalty, and commitment policies followed by Movsesian,] that even though Movsesian said that plaintiff was a good employee[,] that really addressed her job performance, not the lack of loyalty on which he was very strong. [¶] In that situation it's hard for me to infer that there would have been continued employment even if she had wanted to stay in August of '05. [¶] *Frankly, my impression is that if Mr. Movsesian had found out about her lies the first time around and that she was still seeking other*

employment, everybody seems to agree what his reaction would be. [¶] *And I find that he probably would have terminated the plaintiff*." (Italics added.) Townsend argues that there is no evidence in the record supporting the "triple speculation" that Movsesian (1) would have fired Townsend (2) had he found out (3) she was still looking for other employment.

We reject Townsend's argument. The primary basis for the court's decision was that it did not believe Townsend had introduced sufficient evidence to prove the existence of damages. Regardless of the court's specific thoughts on the likely outcome of Movsesian discovering Townsend's continued efforts to secure employment at First Choice, the court's general observation that Townsend failed to meet her burden of proof is the basis of the judgment. Moreover, the court's factual finding ("And I find that he probably would have terminated the plaintiff") is supported by substantial evidence, regardless of the precise meaning of the court's comments as to Movsesian finding "out about her lies the first time around."

As a result of the court's findings, it was compelled to conclude Townsend had not met her burden of proving the existence of recoverable damages. And because the court found that Townsend would not have kept her job at CMS, even if she had not resigned on August 8, 2005, First Choice was not legally responsible for the consequences of Townsend's loss of her job (less income, and a concomitant inability to make life insurance and bankruptcy plan payments). (See *US Ecology, Inc. v. State of California*, *supra*, 129 Cal.App.4th at pp. 902-905 [damages in promissory estoppel claims must be proven by showing causation in same manner as breach of contract claims].)

The court also noted Townsend's alleged damages related to life insurance and bankruptcy were unforeseeable and therefore could not be recovered as a matter of law. (See *Archdale v. American Internat. Specialty Lines Ins. Co.* (2007) 154 Cal.App.4th 449, 469 [noting the continuing viability of the *Hadley v. Baxendale* (1854)

56 Eng. Rep. 145 rule in California: "If the damages are within the reasonable expectation of the parties at the time of contracting they are recoverable"].) Townsend posits that promissory estoppel, as an equitable theory of recovery, is not subject to contract law's strict foreseeability requirement. We need not resolve this issue here, as First Choice is not responsible for any of the consequences of Townsend's decision to resign, regardless of whether such consequences were foreseeable.

DISPOSITION

For the foregoing reasons, we affirm the judgment. First Choice shall recover its costs on appeal.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.